

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4588 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

IBRAHIM HASAN MOHMED AND OTHERS

Versus

STATE OF GUJARAT

Appearance:

MR M.I.Hava, for Petitioners

Mr. H.H.Patel ASSTT. GOVERNMENT PLEADER for
the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 05/03/99

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 17.7.87 passed by the Urban Land Ceiling Tribunal, Ahmedabad in Appeal No. Surat/118/1984 filed against the order dated 8.12.83 of the Competent Authority passed in Urban Land Ceiling case no. 1/1738/Rander. The properties described in the Form were running in the name of Hasham Mohamed situated at Rander. There was constructed property admeasuring 385 sq.mtrs. and open land admeasuring 3947 sq.mtrs. was used as

residence.

2. The learned counsel for the petitioners submitted that Form no.1 under section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 was filled up by Ismail Kasam Baana. The property shown at serial no.1 admeasuring 4249 sq.mtrs. was an agricultural property and residential properties shown at serial nos. 2,3 and 4 were constructed residential properties. Thus, the property shown at item nos. 2,3 and 4 in the said order were not open lands, but constructed residential properties. Therefore, they were not liable to be included., but they have been included by the competent authority under the holding of Ibrahimbhai and the competent authority treated the whole property as one unit after allowing retainable open land plus appurtenant land and held 2449 sq.mtrs. of land as surplus vacant land under section 8(iv) of the said Act by its order dated 9.12.83. The declarant therefore, through his power of attorney filed an appeal before the Urban Land Ceiling Tribunal and the Tribunal by its order dated 14.7.87 dismissed the appeal of the petitioner and confirmed the order dated 9.12.1983 passed by the Competent Authority.

3. Heard the learned counsel for the parties. The learned counsel for the petitioners submitted that it is not in dispute that the petitioner nos. 2 to 6 sons and daughters of the petitioner no.1 and they were major at the time when the Act came into force. Hence, under the provisions of section 2(F) of the said Act, one unit was permissible to the family including spouse with minor son or daughter. But in the present case, the petitioner nos. 2 to 6 are sons and daughters of petitioner no.1 and they were major at the time when the Act came into force. As such, each of the five petitioners are entitled for a separate unit. Even if it is assumed that the property was not gifted to the petitioner nos. 2 to 6 under the law, then also each of the petitioners is entitled for a separate unit, as a result, the holding in the name of the petitioners would not exist for declaration of the surplus land and no surplus land would remain. In the present case, the land at item nos. 2,3 and 4 are constructed properties for the use of residence and are liable to be excluded under the provisions of section 2(9)(ii) of the Act. They cannot be said to be vacant excess land for calculating the holding of the persons concerned. As such, now 2449 sq.mtrs. of land would remain open if it is divided by five units and that is less than the prescribed limit for each unit under the Act.

4. The learned counsel for the petitioners submitted that the land in dispute was running in the name of Hazi Hasham Mohmed Nakhuda who was the grand father of the petitioners. The authorities below have erred in treating one unit of Hasham Mohmed Nakhuda though the petitioners have inherited the same and as such all of them being major members of the family, are entitled to one unit each.

The learned Assistant Government Pleader could not substantiate the judgments of the authorities below. In the facts and circumstances of the case, this petition deserves to be allowed.

5. Accordingly, this petition is allowed. The order dated 9.12.1983 passed by the Competent Authority, Urban Land Ceiling, Surat in Urban Land Ceiling case no. 1/1738/Rander and the order 14.7.87 passed by the Urban Land Ceiling Tribunal, Ahmedabad in Appeal No. Surat/118/1984 dated 14.7.87 are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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